



MEMORANDUM

April 8, 2004

TO: Board of Directors

FROM: Dan Birch

RE: Elkhead Update

INTRODUCTION AND BACKGROUND

A year ago this month, we completed preliminary engineering and asked the Board for authorization to proceed with final engineering. At that time the Board decided not to proceed with final engineering pending more progress being made with institutional agreements and arrangements. Since that time we have regularly reported our various trials and tribulations on those matters, particularly with respect with the agreements needed with 1) the Yampa Participants and the City of Craig, and 2) the various State and Federal agencies pertaining to the Recovery Program portion of the project.

In the last three months we have made a tremendous amount of progress on those agreements, enough so, that on balance, we recommend you authorize start of final engineering. Lee Leavenworth and Mike Sawyer have prepared a confidential memorandum explaining the essential elements of the Federal and State agreements and David Hallford has prepared a confidential memorandum pertaining to the Craig/Yampa Participants. These are presented under your General Counsel's report.

We are not asking that you take action at this time on the above agreements. We want to review the concepts and framework of the agreements, receive any comments you might have, and hopefully obtain your concurrence. Our suggestion is that you delegate final approval to the Water Supply Projects Committee. We expect that the final agreements will be presented for ratification at your July meeting.

We want to emphasize the significance and importance of the decision about whether to proceed with final engineering. First, there are still a number of uncertainties that could delay the project. These include:

- While conceptual understandings have been reached with negotiating representatives of Tri-State and the City of Craig, we have not yet heard from the rest of the Yampa Participants and Craig's City Council.
- Similarly, while the concepts of our State and Federal agreements have been put in place, final agreements have not been approved by Federal solicitors and the Colorado Water Conservation Board, among others.
- We have not yet reached a land deal with the State Land Board.
- We do not have a Corps of Engineers wetlands permit.

On the other hand, we do not see any reason while the above cannot be put in place to allow construction to commence in early 2005.

Of paramount concern, if we do not begin final engineering now, we lose the window to begin construction early in 2005 and the earliest we could start construction would be late in 2005 or early in 2006. This creates additional risks of increased costs because of inflation and, perhaps more importantly, a less favorable bidding climate. Recall that we are making firm commitments to deliver the Recovery Program's share of the project for not-to-exceed amounts. On balance, staff believes the benefits of proceeding with final engineering outweigh the risks. **Accordingly, we ask for Board direction to proceed with final engineering.**

If the Board authorizes final engineering, we would suggest direction that staff stops final engineering if any events transpire which threaten the ability to commence construction in early 2005.

RESERVOIR OPERATIONS AGREEMENT

Because of the Yampa Participants' liability concerns, this agreement has been restructured to be a restatement of previous agreements with the City of Craig. David Hallford's memorandum covers the elements of this agreement.

FEDERAL AND STATE AGREEMENTS

In January, we reported to you that we had reached a conceptual understanding about how this relatively involved and complicated series of agreements would be structured. Just three weeks ago, we heard from Bureau of Reclamation representatives that this approach was fatally flawed. As Lee Leavenworth and Mike Sawyer report in their memorandum, in just more than two weeks, these agreements have been restructured.

We are very appreciative of the efforts of all, particularly representatives of the CWCB and the Bureau of Reclamation, to get these agreements revised in very short order.

PERMITTING

The logjam on the Yampa Plan and PBO has been cleared, thereby allowing us to submit our wetlands permit application. We are currently making final revisions to the application and it will be submitted shortly.

PROPERTY ACQUISITION

We are still awaiting the appraisal from the State Land Board. As of a few weeks ago, we heard this was expected, “any time now”. Two weeks ago we heard the appraiser had been onsite, which we take as encouraging news.

Surveys and legal description of private property interests to be acquired are substantially complete. We intend to use the State Land Board appraisal as a guide to what to offer for these properties, so the delay with the appraisal has also delayed private property acquisition.